

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Larson-Wynn, Inc.)	File Number: EB-06-PO-145
)	
Licensee of Station KODL(AM))	NAL/Acct. No.: 200732920001
The Dalles, Oregon)	FRN: 0003780053
Facility ID # 36629)	

FORFEITURE ORDER

Adopted: September 7, 2007**Released: September 11, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Larson-Wynn, Inc. (“Larson-Wynn”), licensee of broadcast station KODL(AM), in The Dalles, Oregon, for willfully and repeatedly violating Section 73.1350(a) of the Commission’s Rules (“Rules”).¹ On February 21, 2007, the Enforcement Bureau’s Portland Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$4,000 to Larson-Wynn for operating station KODL(AM) at an unauthorized location.² In this *Order*, we consider Larson-Wynn’s argument that the forfeiture amount should be cancelled because of Larson-Wynn’s good faith efforts to comply with the Commission’s Rules.

II. BACKGROUND

2. On October 27, 2006, in response to a complaint, an agent from the Enforcement Bureau’s Portland Resident Agent Office (“Portland Office”) monitored KODL(AM)’s signal on frequency 1440 kHz in The Dalles, Oregon. Using radio direction finding equipment, the agent traced the source of KODL(AM)’s broadcast signal to a horizontal antenna located at 1709 Cherry Heights Road, The Dalles, Oregon. Later that day, the Portland agent interviewed Al Wynn, a representative of Larson-Wynn. Wynn admitted that he had been operating the station from his residence, 1709 Cherry Heights Road, The Dalles, Oregon, with special temporary authority (“STA”) which had expired on February 25, 2004. Wynn provided documents to the Portland agent indicating that after the KODL(AM) STA expired on February 25, 2004, he submitted an extension request, dated August 31, 2004, to the Commission. On September 22, 2004, the FCC returned the request for failure to file the appropriate fee.

3. According to KODL(AM)’s license, the authorized location for the KODL(AM) transmitter is 45° 35’ 31” north latitude, 121° 11’ 57” west longitude.³ The Portland agent’s inspection revealed that the coordinates of the current location of the KODL(AM)’s transmitter at 1709 Cherry

¹ 47 C.F.R. § 73.1350(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732920001 (Enf. Bur., Western Region, Portland Resident Agent, released February 21, 2007).

³ On October 27, 2006, the agent inspected KODL(AM)’s authorized antenna site, observed that KODL(AM)’s authorized antennas were dismantled, and found only an empty field with a sign saying “Future Home of First Christian Church.”

Heights Road, The Dalles, Oregon, are approximately 45° 35' 10" north latitude and 121° 12' 25" west longitude, more than one-half mile from the station's authorized location. A review of Commission records reveals that Larson-Wynn's most recent STA for KODL(AM) expired on February 25, 2004.⁴ According to Commission records, at that time, there was no pending request for STA for KODL(AM), and no pending modification application.

4. On February 21, 2007, the Portland Office issued a *NAL* in the amount of \$4,000 to Larson-Wynn, finding that Larson-Wynn apparently willfully and repeatedly operated station KODL(AM) at an unauthorized location. Larson-Wynn filed a response ("*Response*") on March 27, 2007, arguing that the proposed forfeiture should be cancelled based on Larson-Wynn's good faith efforts to comply with the Rules.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁷ In examining Larson-Wynn's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

6. Section 73.1350(a) of the Commission's rules states "[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization."⁹ On October 27, 2006, the Portland Office agent observed that KODL(AM) was transmitting from a location that was not authorized in the KODL(AM) license. The licensee of KODL(AM) provided documents to the agent indicating that after the KODL(AM) STA expired on February 25, 2004, the licensee submitted an extension request, dated August 31, 2004, to the FCC. On September 22, 2004, the FCC returned the extension request for failure to file the appropriate fee.

7. In its *Response*, Larson-Wynn acknowledges that its August 31, 2004, STA extension request was returned by the Commission. However, Larson-Wynn states that on September 27, 2004, it resubmitted the application along with a check in the amount of the required application fee, and that the check was accepted by the Commission. Larson-Wynn produces a copy of the cancelled check as proof. Consequently, Larson-Wynn argues that it has a STA extension request pending with the Commission and, therefore, it is not willfully failing to comply with the terms of the KODL(AM) license. Larson-Wynn notes that KODL(AM) continues to operate today from the location stated on its STA extension request. Larson-Wynn states that since the Commission "continues to deny knowledge of [its] application for STA," it would submit a new application for STA to the Commission.

8. Reductions based on good faith efforts to comply generally involve situations where

⁴ File No. BSTA-20030811AHL, granted August 25, 2003.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 73.1350(a).

violators demonstrate that they initiated measures to correct or remedy violations prior to a Commission inspection or investigation.¹⁰ We have reviewed our records and we concur with Larson-Wynn that its September 27, 2004, payment was received on October 4, 2004, and deposited by the Commission. Consequently, we find that Larson-Wynn's efforts to secure an STA extension request justify a good faith reduction of the proposed forfeiture amount and we reduce the proposed forfeiture from \$4,000 to \$2,000. We decline, however, to cancel the forfeiture.

9. According to Section 73.1635(a)(4) of the Rules, an STA "may be granted for an initial period not to exceed 180 days. A limited number of extensions of such authorizations may be granted for additional periods not exceeding 180 days per extension."¹¹ The mere filing of an application for an STA or an application for an extension does not grant the applicant a variance on its authority for an unlimited period of time. Pursuant to the clear reading of Section 73.1635(a)(4) of the Rules, assuming the STA extension request was filed on September 27, 2004, and had been granted, the STA would have afforded Larson-Wynn only an additional 180 days, from September 27, 2004, to operate KODL(AM) from the location not currently listed on the KODL(AM) license. It would not have afforded Larson-Wynn an unlimited amount of time to operate from that location, which, at this point, is now almost three years from the purported filing of the STA extension request. As Larson-Wynn is currently operating KODL(AM) at a location not listed on its authorization, and without a current STA to operate from its current location, Larson-Wynn's operation of KODL(AM) continues to violate Section 73.1350(a) of the Rules.

10. Additionally, we note that the Commission has no record of the associated STA application. Even assuming that Larson-Wynn did file the associated application, it made no effort to follow-up or notify the Commission that it did not receive Larson-Wynn's requested extension even after its check was deposited by the Commission. Larson-Wynn states in its *Response* that it is submitting a new application for a STA for KODL(AM), however, the Commission databases show no record, to date, of that application.¹²

11. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture from \$4,000 to \$2,000 is warranted.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Larson-Wynn, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,000 for willfully and repeatedly violating Section 73.1350(a) of the Rules.¹³

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

¹⁰ See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

¹¹ 47 C.F.R. § 73.1635(a)(4).

¹² Any STA application filed after the Portland agent's inspection would not be a basis to reduce the proposed forfeiture amount. The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture. *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1350(a).

Act.¹⁴ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Larson-Wynn, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁴ 47 U.S.C. § 504(a).

¹⁵ See 47 C.F.R. § 1.1914.